

REMARKS

Claims 1 to 32 are pending in this application.

The Rejections under 35 U.S.C. §112

Claims 25 and 26 are rejected under 35 U.S.C. §112 second paragraph. Regarding claim 25 the Office Action states that it is unclear what "xylene solubles" refer to in the portion of the claim identified in the Office Action. Claim 25 is amended to recite "xylene solubles of said polymer blend". It is respectfully submitted that the amendment corrects any lack of clarity. Regarding claim 26, the Office Action states that the claim does not recite the parameters used to measure the amount of the xylene solubles. The Examiner's attention is drawn to paragraphs [0125] – [0133] of the corresponding U.S. Publication No. 2007/0161747, which explains the standard procedure recognized by those skilled in the art by which xylene solubles are measured. It is respectfully submitted that the claim meets all of the requirements of clarity.

Claims 3, 4, 13, 14 and 16 are amended to correct a minor typographic error.

In view of the above, reconsideration and withdrawal of the rejection are respectfully requested.

The Rejections under Prior Art

1. Claims 1-10, 13-22 and 25-28 are rejected under 35 U.S.C. §103(a) as being obvious over Agarwal et al. WO 02/32985. Agarwal et al. is directed to foamed blends of polypropylene-based polymers.

The Examiner acknowledges that Agarwal is silent regarding xylene soluble fractions having the recited properties of weight average molecular weight and intrinsic viscosity and ultralow crystallinity fractions, but argues that because the polymer components of Agarwal are "prepared from the same monomers, combined in the same ratios, using the same catalysts as used in the preparation of components (a) and (b) by the applicant . . . one of ordinary skill in the art would reasonably expect that the polymer composition disclosed by Agarwal would have the same properties of the claimed composition."

Applicants respectfully submit that the wrong standard of review has been applied to the prior art and the claims. The argument presented in the Office Action is essentially an argument based on inherency.

Referring now to MPEP 2112 (IV), the fact that a certain characteristic or result may occur or be present in the prior art is not sufficient to establish inherency of that result or characteristic. Inherency may not be established by probabilities or possibilities. The examiner must provide a basis in fact and or technical reasoning to reasonably support the determination that the alleged inherent characteristic necessarily flows from the teaching in the prior art. In the present instance, the examiner "takes the position that one of ordinary skill in the art would reasonably expect that the polymer composition disclosed by Agarwal would have the same properties as the claimed composition." However, "reasonable expectation" is not the standard for establishing inherency.

First, the critical limitation in claim 1 that the propylene content of the second blend component must be no more than that of the first blend component is neither disclosed nor suggested by Agarwal.

Mixing two components that have a similar (but not the same) range of ethylene comonomer content as that of the claimed composition does not necessarily result in the same physical properties of the xylene soluble fraction at 20°C. Simply changing the metallocene catalyst used, or using a Ziegler-Natta catalyst would change the properties, as would the recited necessary requirement that the second random copolymer has a propylene content of no more than that of the first random copolymer.

It has not been shown that the physical properties of the xylene soluble fraction of a polymer are independent of the type of metallocene catalyst used, or independent of the requirement that the propylene content of the second component is no more than that of the first component, or independent of the propylene content of each component or the amount each component contributes to the blend. Accordingly, it has not been demonstrated that a composition having the same properties of the xylene solubles fraction at 20°C would necessarily be provided by Agarwal.

Moreover, Applicants respectfully submit that it is not common knowledge to one of ordinary skill in the art that the physical properties of the xylene soluble fraction at 20°C of a polymer are:

independent of the type of a metallocene compound with which it is made (or, indeed, that either component is made with a metallocene compound),

independent of the requirement that the propylene content of the lower melting point component is less than that of the higher melting point component, and

independent of or only minorly affected by changes of propylene content of each component or the amount that each component contributes to the blend.

Indeed, this is not the case as the inventive comparative examples show significant differences between components made from Ziegler-Natta catalyst as compared to those made with a metallocene catalyst.

If the Examiner is arguing to the contrary that these considerations are common knowledge among those with skill in the art, Applicants respectfully request that the Examiner either cite to a reference, or produce an affidavit stating that it such of his knowledge in accordance with 37 CFR 1.101(d)(2).

In view of the above, it is respectfully submitted that Agarwal et al. does not support a *prima facie* case for the rejection of the claims. Reconsideration and withdrawal of the rejection are respectfully requested.

2. Claims 11, 12, 23, 24 and 29-32 are rejected under 35 U.S.C. §103(a) as being obvious over Agarwal et al., and further in view of Fuchs et al. (U.S. Publ No. 2006/0167185). These claims depend from independent claims 1, 13, and 27, which are submitted to be allowable for the reasons stated above in connection with the deficiencies of Agarwal. Fuchs et al. Does not remedy the deficiencies of Agarwal. Accordingly, claims 11, 12, 23, 24 and 29-32 are also submitted to be allowable. Reconsideration and withdrawal of the rejection are respectfully requested.

3. Claims 1 and 11 are rejected under 35 U.S.C. §103(a) as being obvious over Kioaka et al. U.S. Patent No. 4,822,840. Kioaka et al. is directed to a low crystalline propylene random

copolymer composition, a process for its production, and a polypropylene composite laminated structure.

The Office Action does not demonstrate how each and every limitation of claim 1 is disclosed or suggested in Kioaka et al. Indeed, Kioaka et al. is even further removed from the invention than Agarwal. For example, Kioaka et al. discloses a second component including 10% to 90% propylene, which is far removed from the second component propylene content of 85% to 97% of the present invention, and does not disclose or suggest the critical feature of the claim that the propylene content of the second component is no more than that of the first component, or the properties of the xylene soluble portion. Nor can the missing features be made up for by an appeal to inherency. As noted above, it must be shown that the teachings of Kioaka et al. must necessarily provide the features of Applicants' claims, and this has not been done. Accordingly, Kioaka et al. does not support a *prima facie* case for obviousness. Reconsideration and withdrawal of the rejection are respectfully requested.

4. Claims 2-10, 12, and 25-32 are rejected under 35 U.S.C. §103(a) as being obvious over Kioaka et al. in view of Fuchs et al. U.S. Pub. No. 2006/0167185. Fuchs et al. is directed to propylene copolymer compositions having good low temperature impact toughness and high transparency. Fuchs et al. is cited for disclosing metallocene catalysts in the production of films. However, Fuchs et al. does not cure the deficiencies of Kioaka et al. as discussed above. Accordingly, claims 2-10, 12, and 25-32 are submitted to be allowable over the cited art. Reconsideration and withdrawal of the rejection are respectfully requested.

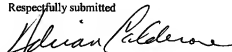
The Foreign References

The Office Action states that copies of WO 00/11076, WO 02/32985, EP 0,483,523 and EP 0,263,718 were not in the file and were not considered. WO 02/32985 ("Argawal") was separately considered by the Examiner. Accordingly, Applicants are resending the three unconsidered references (WO 00/11076, EP 0,483,523 and EP 0,263,718) together with this paper. Consideration of these references is respectfully requested.

CONCLUSION

For at least the reasons stated above all of the pending claims are submitted to be in condition for allowance, the same being respectfully requested.

Respectfully submitted



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